

1 SHAWN A. MANGANO, ESQ.  
Nevada Bar No. 6730  
2 shawn@manganolaw.com  
SHAWN A. MANGANO, LTD.  
3 9960 West Cheyenne Avenue, Suite 170  
Las Vegas, Nevada 89129-7701  
4 Tel: (702) 304-0432  
Fax: (702) 922-3851  
5

DALE M. CENDALI, ESQ. (admitted *pro hac vice*)  
6 dale.cendali@kirkland.com  
KIRKLAND & ELLIS LLP  
7 601 Lexington Avenue  
New York, New York 10022  
8 Tel: (212) 446-4800  
Fax: (212) 446-4900  
9

*Attorneys for Plaintiff Righthaven LLC*

10  
11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**  
13

14 RIGHTHAVEN LLC, a Nevada limited-liability  
15 company,

Plaintiff,

16 v.

17 DEMOCRATIC UNDERGROUND, LLC, a District  
18 of Columbia limited-liability company; and DAVID  
ALLEN, an individual,

19 Defendants.  
20

21 DEMOCRATIC UNDERGROUND, LLC, a District  
of Columbia limited-liability company,  
22 Counterclaimant,

23 v.

24 RIGHTHAVEN LLC, a Nevada limited-liability  
company; and STEPHENS MEDIA LLC, a Nevada  
limited-liability company,  
25

Counterdefendants.  
26  
27  
28

Case No.: 2:10-cv-01356-RLH-CWF

**SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF RIGHTHAVEN LLC'S  
APPLICATION TO INTERVENE AS OF  
RIGHT PURSUANT TO FEDERAL  
RULE OF CIVIL PROCEDURE 24(A)(2)**

1 On June 23, 2011, Righthaven LLC (“Righthaven”) moved the Court to intervene in this  
2 action as of right pursuant Federal Rule of Civil Procedure 24(a)(2) (“Application”). (Dkt. 120.) In  
3 its Application, Righthaven addressed the basis for its standing to sue for copyright infringement  
4 under the Clarification and Amendment to Strategic License Agreement (“Amendment”).

5 Although Righthaven continues to believe that the Amendment was sufficient to confer  
6 standing to sue, Righthaven and Stephens Media wish to put the standing issue to rest. Therefore,  
7 these parties have further amended the Strategic Alliance Agreement in order to address the concerns  
8 raised in *Righthaven LLC v. Hoehn*, where the Court in that case found that Righthaven lacked  
9 standing to sue, even under the Amendment. Doc. # 28, Case. No. 2:11-CV-00050-PMP-RJJ (D.  
10 Nev.) (Pro, J.) The Amended and Restated Strategic Alliance Agreement (“Restated and Amended  
11 SAA”) was executed on July 7, 2011, and is attached hereto as Exhibit 1. The Restated and  
12 Amended SAA gives Righthaven the sole discretion to determine whether or not to bring an  
13 infringement action based on an assigned copyright. Further, as in the first Amendment, Righthaven  
14 is the sole owner of each assigned copyright, and Stephens Media holds only a non-exclusive  
15 license. Stephens Media may not encumber Righthaven’s rights in any assigned copyright, and  
16 Stephens Media’s option to re-purchase any assigned copyright does not accrue until five years after  
17 the copyright is assigned. In short, there can be no question that Righthaven is the only true owner  
18 of any assigned copyright and thus, has standing to sue for infringement.

19 Shortly after the Restated and Amended SAA was executed, Righthaven’s counsel informed  
20 counsel for the defendants and counsel for *amicus curiae* of the existence of the new agreement, sent  
21 them a copy of the agreement, and informed them of Righthaven’s intention to inform the Court of  
22 this recent development. Righthaven communicated to counsel that it was amenable to requesting an  
23 additional briefing schedule from the Court in the event that the defendants wished to address the  
24 issue of standing under the Restated and Amended SAA. Defendants have indicated that they would  
25 like the opportunity to address the Restated and Amended SAA.

26 Given these recent developments, Righthaven has submitted along with this supplemental  
27 memorandum a revised proposed complaint, which alleges facts relating to standing under the  
28

1 Restated and Amended SAA. *See* Exhibit 2. The parties are currently working to provide the Court  
2 with a stipulated revised briefing schedule.

3  
4 Dated this 11th day of July, 2011.

5 SHAWN A. MANGANO, LTD.

6 By: /s/ Shawn A. Mangano  
7 SHAWN A. MANGANO, ESQ.  
8 Nevada Bar No. 6730  
9 shawn@manganolaw.com  
10 9960 West Cheyenne Avenue, Suite 170  
11 Las Vegas, Nevada 89129-7701  
12 Tel: (702) 304-0432  
13 Fax: (702) 922-3851

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15 dale.cendali@kirkland.com  
16 KIRKLAND & ELLIS LLP  
17 601 Lexington Avenue  
18 New York, New York 10022  
19 Tel: (212) 446-4800  
20 Fax: (212) 446-4900

21 *Attorneys for Plaintiff Righthaven LLC*  
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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 11th day of July, 2011, I caused the foregoing document to be served by the Court's CM/ECF system.

SHAWN A. MANGANO, LTD.

By: /s/ Shawn A. Mangano  
SHAWN A. MANGANO, ESQ.  
Nevada Bar No. 6730  
shawn@manganolaw.com  
9960 West Cheyenne Avenue, Suite 170  
Las Vegas, Nevada 89129-7701  
Tel: (702) 304-0432  
Fax: (702) 922-3851

*Attorney for Righthaven LLC*

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